vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.275 OF 2006
IN
WRIT PETITION NO.8736 OF 2004

M/s.Wool Research Association ... Appellant

V/s.

Kalpanath Syam Sunder Sahani ... Respondent

a/w
CIVIL APPLICATION NO.209 OF 2005
IN
LETTERS PATENT APPEAL NO.275 OF 2006
IN
WRIT PETITION NO.8736 OF 2004

M/s.Wool Research Association ... Appellant

V/s.

Kalpanath Syam Sunder Sahani ... Respondent

Mr.A.V. Bukhari with B.V. Bukhari for Appellant
Mr.Avinash Jalisatgi for Respondent

CORAM: **S.B. MHASE &**
SMT.NISHITA MHATRE, JJ.

DATED: **MARCH 7, 2007**

P.C.:

. Heard Mr.Bukhari, learned Counsel for the Appellant. The order challenged is dated 15.4.2005. By the said order, Writ Petition No.8736 of 2004 was admitted and interim relief was rejected after assigning reasons. As against the rejection of interim relief, the present Letters Patent Appeal has been preferred.

2. Mr.Bukhari raises an issue of jurisdiction i.e., according to him, the Reference should have been made by the State Government and not by the Central Government. It is a fact on record that a Reference was made by the Central Government on the directions of this Court passed in Writ Petition No.5055 of 2002. Admittedly, the State Government was not a party to that writ petition and in the reply which was filed by the employer, the employer had raised a point that the State Government is the appropriate government. Inspite of the said issue being raised in the said writ petition, the writ petition was allowed and therefore, the Central Government made the Reference. An advantage is being tried to be taken on some accidental slips in the order because it is a well settled principle that the directions could not have been given by this Court as against a party who is not a party to the writ petition and, therefore, prima facie, at this stage we find that the issue as to which Government is the appropriate government was concluded in the said writ petition and probably the employer being aware of this aspect has not raised that issue in the written statement which was filed in the Reference proceeding made by the Central Government. Thus, when there was an opportunity available for the employer to raise the said issue second time at the Reference stage, that was not availed

of. It is a fact on record that without conducting a domestic enquiry or departmental enquiry, the Respondent has been removed from service.

3. We are told that the employer is a research institute started by the Central Government and looking to the conduct of the research persons wherein an employee is asked to run from pillar to post even to get a Reference and thereafter to get the Reference decided and even if he is successful in the Reference, instead of obeying the orders, he is being involved in proceedings after proceedings. This conduct of the employer itself persuades this Court not to entertain the Letters Patent Appeal. Letters Patent Appeal is accordingly rejected. However, we hope that the learned Single Judge will give expeditious hearing to the Writ Petition which is pending before it.

4. Letters Patent Appeal stands disposed off.

5. In view of the disposal of the Letters Patent Appeal, nothing survives in the Civil Application No.209 of 2005 and the same is disposed off accordingly.

(NISHITA MHATRE, J.) (S.B. MHASE, J.)